Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

SYLVIA L. BECKEY, d/b/a THE AMERICAN INSTITUTE OF LAW, ECONOMICS & COMPARATIVE STUDIES,

Petitioner,

v.

CENLAR FEDERAL SAVINGS BANK,

Respondent.

SYLVIA L. BECKEY, JD LLM doing business as THE AMERICAN INSTITUTE OF LAW, ECONOMICS & COMPARATIVE STUDIES,

Petitioner,

v.

JUDGE DAVID PHILLIPS,

Respondent,

AND

CENLAR FEDERAL SAVINGS BANK,

Real Party in Interest.

Petition for a Writ of Certiorari to the Supreme Court of the State of Texas

---

PETITION FOR A WRIT OF CERTIORARI

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39 pp

QUESTIONS PRESENTED

1. Whether non-negotiable Deed of Trust or Mortgage Loan Agreement language allowing for an extrajudicial foreclosure on homestead property must be interpretted to include basic due process fair hearing procedures (notice, hearing, impartial tribunal, right to cross examine, right to counsel, right to jury, judgment in a court of record) and a judgement of default by a Court of record prior to the sale of the property on the Courthouse steps on the first Tuesday of the month pursuant to Texas statute?

2. Whether an extrajudicial sale of homestead property in Texas pursuant to state law without the mortgage company first obtaining a judgement of default by a Court of record is null and void as unconstitutional pursuant to primary authority of the "Law of the Land" provisions of the Supremacy Clause, and the Fifth Amendment and Fourteenth Amendment of the U.S. Constitution which provide certain inalienable constitutional guarantees of a fair hearing and due process prior to the taking of life, liberty or property, and secondary protection of citizen's homes through the Second, Fourth and Fifth Amendments to the US Constitution?

3. Whether a State Court summary proceedings and a judgment of eviction based on an extrajudicial foreclosure sale under the laws of the State of Texas and through non-negotiated Deed of Trust loan document language providing for an extrajudiciary foreclosure is null and void as a matter of constitutional law?

4. Whether there can be so many irregularities in connection with an extrajudicial foreclosure sale (via non-negotiated or negotiated provisions) such that it is unconstitutional and should be set aside? even if it might otherwise have been valid under the freedom of contract clause in the US Constitution?

5. Whether the federal simultaneous proceedings doctrine (as applied to an attorney's practice) and/or the Supremacy Clause of the US Constitution requires this Court to find that in circumstances where a practicing attorney has a scheduling conflict when the date of a state law proceeding (extrajudicial foreclosure sale) conflicts with an out-of-state federal court ordered filing date and hearing, and the attorney attends the out-of-state federal court proceedings (where a private client is being represented) causing events likened to a default in the state law proceeding (an extrajudicial foreclosure of the attorney's home and office because sale procedures confused the owner and rescue buyer such that rescue buyer was not able to tender money to Substitute Trustee in time to stop foreclosure) should be vacated as a coutesy to the attorney who is an officer of the Court, especially when the default involved (i) the loss of a home and business office in which the attorney had 50-percent equity ownership and (ii) negative information on the attorney's personal credit report?

6. Under the circumstances described in question "5" supra, whether the failure of the state court to vacate the sale as a minimum professional courtesy to the federal court attorney was reversable error?

7. Insofar as the First Amendment guarantees the right to petition the government for redress of grievances, is the policy and practice of the Courts of the State of Texas to dismiss cases that they do not like on hyper-technical basis (rather than address the facts, law and substance of the claim in a written decision) a violation of the First Amendment and basic due process fair hearing rights guaranteed under the Fifth and Fourteenth Amendments?

STATEMENT PURSUANT TO RULES 14.1 and 29.1

All parties are named in the caption.
Cenlar Federal Savings Bank ("Cenlar") federally regulated bank incorporated in the State of New Jersey, with its headquarters in Trenton, New Jersey. Cenlar routinely purchases mortgage notes from out-of-state locations proceeds with extrajudicial foreclosures in five States.

Caveat as to other or unnamed parties:

(a) The U.S. Housing and Urban Development Agency (HUD) was the actual owner of the property, pursuant to the extrajudicial sale county real estate records, during the time of the state court summary eviction proceedings and its policies of eviction where behind the refusal to rescend the sale, but HUD never formally appeared in the legal proceedings and used Cenlar as the evicting party in all public Court papers.

(b) Judge David Phillips, County Court No. 2 Judge, of Travis County, State of Texas, is a party in the Writ of Mandamus filed with Third Judicial District, Court of Appeals of the State of Texas. This Writ was denied and its record is incorporated by reference.

(c) The current owner of the property per the County records is Elizabeth Clinton.

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PETITION FOR A WRIT OF CERTIORARI

INTRODUCTORY PRAYER

Appellant Sylvia L. Beckey doing business as The American Institute of Law, Economics and Comparative Studies prays that this Court to grant petition for certiorari to review an adverse decision by the Supreme Court of the State of Texas.

OPINIONS BELOW (UNREPORTED)

The decision of the Supreme Court of the State of Texas was a denial of an Application for a Writ of Error (see Appendix 1a).

The decisions of the Third Judicial District of the Court of Appeals of the State of Texas consisting of short, summary denials of the appeal (see Appendix 2a and 3a).

Three decisions of Judge David Phillips, as to which reversal is sought of all three or any one, (1) denial of Ms. Beckey's pre-trial motion for summary, (2) granting summary judgment or a directed verdict to Cenlar, and (3) denying Ms. Beckey's post-trial motion to set aside the judgment, and all motions for reargument and reconsideration thereof (see Appendix 4a-6a).

JURISDICTION

This Court has jurisdiction under 28 U.S.C. 1257 because appellant seeks review of adverse decisions rendered by the Supreme Court of the State of Texas on or around January 5, 1996, and inferior courts, as to substance, effect, form and practice as applied to a private citizen-attorney because determinations being made are believed to be contrary to and in conflict with basic guaranteed and inalienable due process fair hearings rights of various provisions of the United States Constitution in connection with foreclosure procedures by lending institutions, which in Texas are done extrajudicially (without a judgment of a Court of record in advance of the sale and without judicial supervision of the manner in which the sale is conducted).

The original Petition was filed on April 3, 1996 and the Clerk of the Court, through a letter dated April 16, granted a sixty day time extension from April 16, 1996 within which to file a revised Petition prepared pursuant to the Rules of the Court. This filing is timely and within the sixty day extension.

RELEVANT MORTGAGE NOTE (DEED OF TRUST) LANGUAGE

Relevant non-negotiable language of the Mortgage Note (Deed of Trust) used by all real estate developers, mortgage companies and lending institutions in the State of Texas:

> It is further agreed that if default be made in payment...under said note, the holder of the note may at his option, without demand or notice, request the Trustee hereunder, and the Trustee shall be and is hereby authorized and empowered to proceed with foreclosure in satisfaction of such item as if under a full foreclosure, conducting the sale as therein provided and without declaring the unmatured portion of the debt due.
>
> * * *
>
> The deed or deeds which shall be given by said Trustee to the purchaser or purchasers at such sale, shall be prima facie evidence of the truth of all the recitals therein as to default in the payment of said notice, or of interest due thereon, ...the request

to the said Trustee to sell, the advertisement or posting of such sale, the proceedings at such sale, the facts, if any, authorizing a substitute Trustee to act in the premises, and everything necessary to the validity of such sale.

The Grantors specifically agree that after any sale under this Deed of Trust they shall be mere tenants at sufferance of the purchaser of said property at the Trustee's sale,and that the purchase shall be entitled to immediate possession thereof, and that if the Grantors fail to vacate the premises immediately, the purchaser may, and he shall have the right to go into any justice court in the precinct or county in which the property is located and file an action in forcible entry and detainer, which action shall lie against the Grantors as tenants at sufferance.

APPLICABLE CONSTITUTIONAL LAW PROVISIONS

The following provisions of the US Constitution apply in this case:

Article VI, Clause 2:

This Constitution, ... shall be the supreme Law of the Land; and the Judges in every

State shall be bound thereby; any Thing in the Constitution or laws of any state to the Contrary notwithstanding.

First Amendment:

Congress shall make no law ...abridging ...the right of te people...to petition the Government for a redress of grievance.
Third Amendment:

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Fourth Amendment:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated....

Fifth Amendment:

No person shall... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment, Section 1:

All persons born or naturalized inthe United States, and subject to the

jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any persons within its jurisdiction - the equal protection of the laws.

STATUTORY PROVISION INVOLVED

Vernon's Texas Property Law, 50.001 et seq. allowing inter alia, and providing for extrajudicial sales with language similar to the following:

Extrajudicial foreclosures shall be conducted on the first Tuesday of the month at the County courthouse on the stairs of the east entrance of the courthouse.

STATEMENT OF THE CASE

In or around August, 1990, Ms. Sylvia L. Beckey, a graduate of Duke University School of Law, a published scholar of American constitutional law (Associate Editor of The Constitution Annotated (GPO: 1973 Edition) and an experienced attorney licensed in New York and Washington, DC, left New York City and returned to her home State of Texas for a number of

reasons including the increasingly worsening economic environment in the wake of the 1987 Stock Market Crash and the prolonged illness and prospective death of a parent in Texas. Ms. Beckey established a sole proprietor research Institute under the registered business name of The American Institute of Law, Economics & Comparative Studies, near the University of Texas School of Law in Austin, Texas, whereby she earned an income by engaging in legal and economic research and writing as well as through a limited law practice involving New York, federal and international law or team lawyering contract work.

In or around 1992, Ms. Beckey purchased a corner residential lot with two buildings (renovated and used as a rooming house and adjacent cottage office) near the University of Texas northeast campus area. When she moved into the property, she had been promised and contractually guaranteed a $300,000 finder's fee in $30 million venture capital transaction and insurance company acquisition project. The money was to be used to pay the balance due on the mortgage ($46,000), repay start-up and moving loans, and establish a trust fund for the research Institute. After months and months of delays, the funding had not arrived and Ms. Beckey's assets and personal savings were becoming exhausted. Ms. Beckey fell behind in the mortgage payments. Property values, however, in Austin began to increase and Ms. Beckey learned that her property's value was

appraised at $83,000 and thus she had captured as much as $42,000 of equity. She began to seek refinancing or negotiate a friendly buy-out prior to a foreclosure sale which might damage her credit rating.

All the while, Ms. Beckey believed that she would have a normal court hearing and a judgment would be entered prior to a foreclosure sale actually transpiring. Ms. Beckey planned to implead the financier who contracted to provide the venture capital as a third-party defendant in the formal foreclosure litigation. Ms. Beckey also calculated that she would have 90-120 days from the time she actually received formal notice of litigation on the note and any actual sale of the property.

In or around March 1994, Ms. Beckey received notice of the prospective extrajudicial sale of the property. Much to her surprise, the Deed of Trust Note on the property provided that she had effectively waived any due process rights. Ms. Beckey vigorously protested that she never knowingly and willfully waived any due process rights, but rather had depended on them. Nonetheless, the mortgage holder, Cenlar Federal Savings Bank ("Cenlar") followed the procedure of a twenty day certified mail notice of an extrajudicial foreclosure sale by the Trustee at the courthouse on the first Tuesday of the following month. The Deed of Trust creates a legal fiction whereby the Trustee is deemed to be the owner's representative of the property

and has the power to sell the property upon declaring a default.

Ms. Beckey sought a temporary restraining order and injunction before Judge Sparks in the United States District Court for the Western District of Texas in Austin. Judge Sparks denied her requests saying in dicta that the extrajudicial foreclosure procedures were matters of state law. Ms. Beckey sought to appeal to the Fifth Circuit but she did not have time and resources to perfect her appeal because of the intensity of the threats of a sale every few weeks.

Various sales were postponed in various ways for various reasons. But each time the twenty day notice period was too short within which to obtain and close on a refinancing arrangement. This cycle continued for several months until the first week of September, 1994.

On September 1, 1994, Cenlar refused to tell Ms. Beckey whether they would forego their right to sell the property on the following Tuesday, saying that a decision would not be made until Tuesday morning. Monday, September 5, 1994 was Labor Day. On September 6, 1994, Ms. Beckey was under Court Order from Judge Reinhard in the U.S. District Court for the Northern District of Illinois (in Simmons v. GTE/Contel, in which Ms. Beckey was appearing Pro Hac Vice on behalf of a private client with an ERISA claim) to file litigation papers in Rockford,

Illinois and attend a hearing early in the morning of September 7, 1996. Her client mailed her a plane ticket, and she was obliged to leave Austin on September 6, 1994 at 6:30 am in the morning, not knowing whether the Bank would wait any longer for her to obtain refinancing on the property, which was then being negotiated and processed. The sale was noticed for 10 am; prior notices had said 1 pm. Since the sale was extrajudicial (without a judge) Ms. Beckey could not seek a local state court order delaying the sale due to the fact that she had a scheduling conflict with a federal court order. Ms. Beckey had a rescue buyer ready to be at the courthouse steps with $18,000 cash to bring the mortgage up to date and to protect her credit, if in fact the Bank decided, at the last minute to foreclose.

The Bank decided to foreclose. But the sale took place at 1 o'clock instead of 10 am (the notice time indicated on the notice). Ms. Beckey's rescue buyer was at the court house's east entrance at 10 am, but he was informed that the house was not going to be sold or he could not locate anyone with knowledge or otherwise determined that it was being sold on that day such that he left the premises without tendering the $18,000 cash. Had Ms. Beckey been present (and she would have been

but for the conflicting court order of Judge Reinhard requiring her to be out-of-state), she would have personally coordinated the rescue buyer with the trustee. Such coordination while en route by plane to Chicago and then Rockford, Illinois, however, proved to be futile as Ms. Beckey could not reach her rescue buyer by phone in the short interval that she had to call from the Chicago airport to determine the status of the situation.

For a period of time of over two weeks, Ms. Beckey did not know what had transpired on September 6, 1994. Finally, she learned from another person that the house had been offered for sale at 1 o'clock no one offered to buy her property (because her situation was well-known in the community) and that Cenlar had purchased the house itself. (Almost a year later Ms. Beckey learned that the house had been immediately resold to HUD, though all dealings as to the foreclosure were continued in the name of Cenlar; this nondisclosure is legally significant because due process Fifth Amendments rights between acts of a federal agency, such as HUD, and a private citizen should not be diminished by state laws or non-negotiable contractual language requiring a waiver of due process fair hearing rights.)

In subsequent weeks, Ms. Beckey protested the foreclosure and opposed a Justice of the Peace eviction proceedings. Ms. Beckey and her

rescue buyer offered (and was willing and able) to tender $22,000 in cash on October 22, 1994, to reinstate the loan and vacate the foreclosure. Cenlar refused to attend the requested meeting and closing which would have vacated the foreclosure.

Summary proceedings then continued against Ms. Beckey as a tenant in sufferance de novo before the County Court No. 2, Travis County, Judge David Phillips residing. Various pre-trial motions were filed and argued challenging the constitutionality of the sale, as Ms. Beckey had expected a judgment by a court of record prior to the sale. In February, 1995, a hearing and trial was had before Judge David Phillips. No one from the Bank appeared to testify and provide any evidence of the foreclosure or the default. No one at the trial had been present at the foreclosure. Ms. Beckey contended that there was a mistrial for lack of bank evidence. Though the landlord tenant eviction rules say that Court cannot rule on issues related to the property, Judge Phillips dismissed the jury and ruled as a matter of law that Ms. Beckey must vacate the property. Post-trial and post-judgment motions by Ms. Beckey challenging the constitutionality of the summary proceeding were all denied. Her appeals, including a Writ of Mandamus of Judge Phillips, were summarily denied without any meaningful discussion of the law. Ms. Beckey was constantly dunned with threats of eviction and forcible entry by Cenlar, and the Sheriff's office confirmed that

they would be required to act once a warrant was issued to evict. Due to the continued delays in the funding arrangements for her research Institute, Ms. Beckey was without sufficient money to order the Court transcript or to post a bond to stop the issuance of a warrant until the exhaustion of all appeal rights. Hence, in May 1995, Ms. Beckey placed her books and records in storage, and temporarily left the property to look for work in Houston.

Upon information and belief, in June 1995, HUD or Cenlar or the County Sheriff's office forcibly seized possession of the house, demanded that her roomers leave the property, posted notices and changed the locks.

Ms. Beckey challenges the procedure because of its potential for abuse and because, in her opinion, the system defeated her ability to obtain refinancing which she should have been able to obtain due to her 50-percent equity interest in the property. Some of this equity represents Ms. Beckey's mother's retirement money which had been invested in the property. Moreover, Ms. Beckey has obligations to other creditors which could have been paid had she been able to liquidate her equity. Ms. Beckey still owes various contractors who worked on the renovation of the house and cottage office. Upon information and belief, the property values around the University of Texas in Austin continue to increase dramatically and the house is probably worth substantially more at this

time.

Ms. Beckey further argues that some concession should have been made as to the brutal mechanics of the procedure because she stood in the shoes of a multiple-protected person under the Constitution (single woman, over 40, handicapped with a respiratory disability). This matter is being pursued by Ms. Beckey as a public interest case because most people wo are victims of the application of the Texas extrajudicial foreclosure law and procedures are without resources or expertise with which to challenge it. Part of Ms. Beckey research Institute's work is to pursue causes which unjustly injure the economic well-being of private individuals.

REASONS FOR GRANTING THE PETITION

Extrajudicial foreclosure has been outlawed in most States because it violates basic concepts of fairness as to the taking of a person's property without a full compliment of due process fair hearing rights.

I. THE U.S. CONSTITUTION CONTAINS CERTAIN INALIENABLE RIGHTS WHICH CAN BE DEPENDED ON PROTECTING A PRIVATE CITIZEN FROM THE FORECLOSURE SALE OF HIS OR HER PRIVATELY OWNED HOME UNDER COLOR AND PROTECTION OF STATE LAW WITHOUT FIRST ENJOYING THE PROTECTION OF FIFTH AND FOURTEENTH AMENDMENT DUE PROCESS FAIR

HEARING RIGHTS (NOTICE, HEARING, IMPARTIAL TRIBUNAL, RIGHT TO CROSS-EXAMINE, PRESENT EVIDENCE, CONDUCT DISCOVERY, RIGHT TO A JURY, RIGHT TO COUNSEL, JUDGMENT OF RECORD & APPEAL)

A. Under the Supremacy Clause, the U.S. Constitution is the Supreme law of the land and its force and effect cannot be diminished by state law and procedure.

The Law of the Land provision of the Supremacy Clause of the United States Constitution prevails. Federal constitutional rights in conflict with state law of the land must prevail, as the inalienable rights guaranteed by the Constitution cannot be diminished for the convenience of Banks and mortgage companies.

Judge David Phillips failed to honor his federal Constitutional obligation to honor Ms. Beckey's due process fair hearing rights when she stated that she had never willfully and knowingly waived them; Judge Phillips had the duty to ignore conflicting state law and rules, which he failed to do. See Cooper v. Aaron, 358 U.S. 1 (1958); Chaflin v. Houseand, 93 U.S. 130 (1876);

B. The Constitution traditionally recognizes people's homes as being sacred and special in the Third, Fourth and Fifth Amendments

As indicated in the above quoted text of the Third, Fourth and Fifth Amendment, people's homes are considered to be very special and sacred under the Constitution. A person's home relates to a citizen's basic ability to function in society, to his or her personal dignity, well-being, security, and strength through which he or she can function in the community as a contributing person and worker. Without a home, a person is at great risk of physically harm, loss of self-esteem, loss of employment and loss of identity in the community as her or she is at great risk of becoming a burden on society.

Hence, Petitioner argues that any foreclosure proceeding should be subjected to maximum scrutiny and require maximum adherence to due process fair hearing requirements under the Fifth and Fourteenth Amendments. These rights are further discussed below. They are totally ignored by the existing extrajudicial prccess which Ms. Beckey experienced.

C. The foreclosure sale of a person's home is sufficiency serious such that the Constitution should be read to be included in every step of the process of taking away a person's home:

The extent to which procedural due process should be afforded a citizen is proportional to nature of the resulting loss and a citizen's interest in avoiding the loss which outweighs

the government's interest in summary adjudication. See Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886, 894-895 (1961).

Notice and a hearing are certainly basic requirements of due process which should be met prior to altering a home owner's status (making them tenants of sufferance subject to summary eviction proceedings). See generally Bell v. Burson, 402 U.S. 535, 542 (1971); Board of Regents v. Roth, 408 U.S. 564, 570 nn. 7, 8 (1972). Hence, Petitioner contends notice and a hearing should transpire prior to the sale of the house, not after.

Arguments that there is no state action in these extrajudicial proceeding are bogus. The Constable served eviction papers, the Justice of the Peace ordered eviction (honoring the irregular extrajudicial sale and enforcing unconstitutional contractual provisions), as did the County Court Judge during a de novo hearing on the Eviction Petition. Petitioner was threatened and abused by the Court for requesting minimum recognition of basic rights of citizenship.

Basic due process fair hearing rights of: (a) notice of a hearing (i.e., the notice here of a sale); see Armstrong v. Manzo, 380 U.S. 545, 552 (1965); (b) a hearing (see Fuentes v. Shevin, 407 U.S. 67, 80-81 (1972); Sniadach v.

Family Finance Corp., 395 U.S. 337 (1969)); (c) before an impartial tribunal (Wong Yang Sung v. McGrath, 339 U.S. 33 (1950)); (d) with an opportunity to confront and cross-examine (see Goldberg v. Kelly, 397 U.S. 254, 269 (1970); Green v. McElroy, 360 U.S. 474, 496 (1959)); (e) an opportunity to present evidence; (f) a right to jury; (g) a right to counsel; (h) a right to discovery; and (i) a judgment by a court of record PRIOR TO the sale (see Green v. McElroy, 360 U.S. 474, 496 (1959), quoted with approval in Goldberg v. Kelly, 397 U.S. 254, 270 (1970)) of the property was totally ignored and never honored in any form or fashion.

(l) All mortgage documents should be read to include it unless the home buyer is given a choice as to non-extra judicial foreclosure language and extrajudicial foreclosure provisions; in Texas at this time, there is no choice and a legal fiction of a Trustee ownership is used to defeat basic fair hearing due process rights.

Ms. Beckey read the mortgage foreclosure documents to include the Constitution's guarantees of due process and had assumed that the extrajudicial foreclosure sale would not transpire without there first being a judgment by a court of record as to a default having taken place. There was no such judgment, as there was no true default. Rather there was a miscommunication between the mortgage holder and

the rescue buyer, while Ms. Beckey was ordered by a federal judge to be out-of-state and attending a hearing in another matter for a private client.

Full due process hearings are better for the banks, too, because a foreclosure cannot later be challenged and rights to title are more definitively determined.

In Texas, at this time, home buyers have no choice. If a choice was offered as to whether the extrajudicial foreclosure language can be in the mortgage papers and Deed of Trust, this case would be different matter. Ms. Beckey was not given any choice, nor are other Texas home buyers. The freedom of contract clause of the constitution is totally inapplicable here because this provision is an adhesion provision required by a party of superior bargaining power upon persons with no bargaining power. In most instances, such provisions are held to be null and void. The state court refused to do saying that it was bound by tradition and state law authority.

(2) Regardless of the waiver issue, there can be sufficient irregularities in the sale proceeding such as to warrant setting aside the sale.

As indicated in the above-described statement of facts, there were numerous

irregularities in the manner in which the foreclosure transpired. Even if this Court should find that due process rights had been waived, there is sufficient state action, federal action (under color of state law), and other irregularities as to vulnerable person such that the foreclosure sale should have been vacated by the state court.

II. UNDER THE SIMULTANEOUS PROCEEDINGS DOCTRINE A DEFAULT IN STOPPING AN EXTRAJUDICIAL FORECLOSURE PROCEEDING AND SALE (DUE TO A SCHEDULING CONFLICT WITH A FEDERAL COURT ORDERED HEARING) SHOULD HAVE BEEN VACATED AS A MINIMUM PROFESSIONAL COURTESY TO AN ATTORNEY, HOME OWNER WHO IS AN OFFICER OF THE COURT

The Courts have a constitutional obligation to correct matters and effectuate justice when conflicting proceedings transpire. Under the federal doctrine of simultaneous proceedings, the State Court should have vacated the sale to prevent a manifest injustice. See Ledwith v. Storkan, 2 F.R.D. 539, 544 (D.C. Neb. 1942), as cited in 10 Wright &Miller, Federal Practice and Procedure section 2695, at p. 496, n. 2, and Vac-Air, Inc. v. John Mohr & Sons, Inc., 471 F.2d 231 (7th Cir. 1973), as cited ibid, at p. 498, n. 5.

III. THE POLICY AND PRACTICE OF THE COURTS OF THE STATE OF TEXAS TO DISMISS CASES THAT THEY DO NOT LIKE ON HYPER-TECHNICAL BASIS (RATHER

THAN ADDRESS THE FACTS, LAW AND SUBSTANCE OF THE CLAIM IN A WRITTEN DECISION) A VIOLATION OF THE FIRST AMENDMENT AND BASIC DUE PROCESS FAIR HEARING RIGHTS GUARANTEED UNDER THE FIFTH AND FOURTEENTH AMENDMENTS

The First Amendment guarantees private individuals the right to petition the government for redress of grievances. This right is basic and includes proceedings in litigation and access to the Courts. See California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972); Edwards v. South Carolina, 372 U.S. 229 (1963), compared with Cox v. Louisiana, 379 U.S. 559 (1965).

The Courts of the State of Texas have a policy and practice of dismissing cases which they do not like at the outset on technical and hyper-technical basis. Petitioner respectfully submits that this policy is unconstitutional and inconsistent with the State Court's obligations under the Supremacy Clause to effectuate justice in all of their proceedings and grant all litigants (including Pro Se parties) their full compliment of due process fair hearing rights.

No decision or logic or application or recognition of constitutional law was acknowledge in any State Court decision related to Ms. Beckey's challenge to the existing system and procedures. Ms. Beckey urges this Court to

encourage and direct the Texas state judiciary to try harder to recognize and effectuate true justice with each dispute that comes before the Courts such that matters may be resolved in a non-violent matter, and the people's faith in a currently dysfunctional system might be restored and strengthened.

CONCLUSION

For the foregoing reasons, Appellant Sylvia L. Beckey, doing business as The American Institute of Law, Economics and Comparative Studies, respectfully requests that this Court grant her petition for a writ of certiorari to review and reverse the decisions of the Supreme Court of the State of Texas and the inferior state courts.

Respectfully submitted,

Sylvia L. Beckey, Esq.
THE AMERICAN INSTITUTE OF LAW,
ECONOMICS & COMPARATIVE STUDIES
2624 Weslayan # 1142
Houston, Texas 77027
(512) 479-1688

APPENDICES

Computer Reconstruction
Letter Decision of Court

SUPREME COURT OF THE STATE OF TEXAS
Price Daniels Building
Austin, Texas

January 5, 1996

Sylvia L. Beckey
The American Institute of Law,
Economics & Comparative Studies
5203 Martin Avenue
Austin, Texas 78751

Re: Beckey v. Cenlar Federal Savings Bank
Case File No._____

Dear Ms. Beckey:

Please be advised that your Application for a Writ of Error has been denied.

Sincerely,

/s/

Computer Reconstruction

No. 03-95-00109-CV

IN THE COURT OF APPEALS FOR THE
THIRD SUPREME JUDICIAL DISTRICT OF TEXAS
Austin, Texas

SYLVIA L. BECKEY JD LLM DBA THE AMERICAN INSTITUTE OF LAW, ECONOMICS & COMPARATIVE STUDIES,

Appellant,

v.

CENLAR FEDERAL SAVINGS BANK,

Appellee.

DECISION OF THE COURT

The appeal of Appellant, Ms. Sylvia Beckey, is denied.

SO ORDERED.

/s/

1995

Computer Reconstruction

No. 03-95-00239-CV

IN THE COURT OF APPEALS FOR THE
THIRD SUPREME JUDICIAL DISTRICT OF TEXAS
Austin, Texas

SYLVIA L. BECKEY JD LLM DBA THE AMERICAN INSTITUTE OF LAW, ECONOMICS & COMPARATIVE STUDIES,

Petitioner,

v.

DAVID PHILLIPS,

Respondent,

and

CENLAR FEDERAL SAVINGS BANK,

Real Party in Interest.

DECISION OF THE COURT

The application for a Writ of Mandamus of Ms. Sylvia Beckey is denied.
1995

SO ORDERED.

/s/

Computer Reconstruction

Travis County - State of Texas

CENLAR FEDERAL SAVINGS BANK,

Petitioner,

County Court No. 2

No.223019/95

v.

SYLVIA L. BECKEY,

Respondent.

ORDER

NOW, HAVING COME before this Court Petitioner's complaint seeking an Order of Eviction of Ms. Sylvia L. Beckey, following an extrajudicial foreclosure sale, and Ms. Beckey having sought a trial de novo of the eviction complaint and this Court having heard evidence and this Court having dismissed the jury without requiring any findings of fact, hereby determines as a matter of law, that the petition seeking an eviction is hereby GRANTED.

Signed on this _____ day of February, 1995

/s/JUDGE DAVID PHILLIPS

Computer Reconstruction

Travis County - State of Texas

CENLAR FEDERAL SAVINGS BANK,

Petitioner,

County Court No. 2
Case No. 223019/95

v.

SYLVIA L. BECKEY,

Respondent.

ORDER

NOW, HAVING COME before this Court, Ms. Beckey's post-trial motion vacating judgment and dismissing the Petition for Eviction of 5203 Martin Avenue, County of Travis, Austin, Texas, and declaring the extrajudicial sale null and void on the basis of its alleged unconstitutionality, lack of due process and full fair hearing rights and the entry of a judgment of a court of record prior to the sale and for other irregularies and alternatively under the doctrine of simultaneous proceedings is DENIED.

Signed on this _____ day of February, 1995

/s/JUDGE DAVID PHILLIPS

Computer Reconstruction

Travis County - State of Texas

CENLAR FEDERAL SAVINGS BANK,

Petitioner,

County Court No. 2
Case No. 23019/95

v.

SYLVIA L. BECKEY,

Respondent.

ORDER

NOW, HAVING COME before this Court Ms. Beckey's pre-trial motion for summary judgment dismissing the Petition for Eviction of 5203 Martin Avenue, County of Travis, Austin, Texas, and declaring the extrajudicial sale null and void on the basis of its alleged unconstitutionality, lack of due process and full fair hearing rights and the entry of a judgment of a court of record prior to the sale and for other irregularies and, alternatively, under the doctrine of simultaneous proceedings is DENIED.

Signed on this _____ day of February, 1995

/s/JUDGE DAVID PHILLIPS

FILE COPY (2)

Supreme Court, U.S.
FILE
JUL 31 19
CLERK

No. 95-2053

IN THE
Supreme Court of the United States

October Term, 1995

SYLVIA L. BECKEY, d/b/a THE AMERICAN INSTITUTE OF LAW, ECONOMICS & COMPARATIVE STUDIES,
Petitioner,

v.

CENLAR FEDERAL SAVINGS BANK,
Respondent.

Application for a Writ of Certiorari to the Supreme Court of the State of Texas

RESPONDENT'S BRIEF IN OPPOSITION

Stephen C. Porter
SBT No. 16153300
Barrett, Burke, Wilson, Castle Daffin & Frappier, L.L.P.
6750 Hillcrest Plaza Drive
Suite 313, L.B. #8
Dallas, Texas 75230
Telephone: (214) 386-5040
Attorney for Respondent, Cenlar Federal Savings Bank

11 pp

CERTIFICATE OF INTERESTED PARTIES

1. Sylvia L. Beckey, Petitioner, The American Institute of law, Economics & Comparative Studies, 2624 Weslayan Street, #1142, Houston, Texas 77027, (512) 479-1688.

2. Cenlar Federal Savings Bank, 425 Phillips Boulevard, Trenton, New Jersey 08618, (609) 683-4488.

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Ramsey v. United Mine Workers of America, 91 S.Ct. 658 at 664-5, 401 U.S. 302 at 312 (1971) 3

Ray Claims Equipment, Inc. v. Koch Gathering Systems, Inc., 45 F.3d 962 (5th Cir. 1995) 3

Scott v. Paisley, 271 U.S. 632 at 635, 46 S.Ct. 591 at 592, 70 L.Ed. 1123 at 1125 (1926) 5

Walter Fuller Aircraft Sales, Inc. v. Republic of Phillipines, 965 F.2d 1375 (5th Cir. 1992) 3

STATUTES

28 U.S.C. §1257 . . . . . 1, 2, 3, 4

Tex.Prop.Code Ann. 51.002 (West 1995) 1, 2, 5, 5

I. STATEMENT OF JURISDICTION

Petitioner, Sylvia L. Beckey, has asserted jurisdiction pursuant to 28 U.S.C. §1257. Respondent, Cenlar Federal Savings Bank, disputes that jurisdiction has been established because Petitioner has not produced a sufficient record on appeal to establish any of the elements of 28 U.S.C. §1257.

II. QUESTIONS PRESENTED FOR REVIEW

1. Has a sufficient record been produced in this Court to allow Petitioner to raise the issues presented in the Petition for Writ of Certiorari?

2. Does this Court have jurisdiction over this appeal?

3. Is the Texas Foreclosure Statute, Texas Property Code §51.002 constitutional?

III. STATEMENT OF THE CASE

Petitioner alleges to be an individual who borrowed money from Respondent to purchase a home in Austin, Texas. According to her Petition for Writ of Certiorari, Petitioner's loan was secured by a deed of trust which provided for a non-judicial foreclosure sale as a remedy in the event of default. According to her Petition, Petitioner defaulted on her loan and her real estate was foreclosed on. Petitioner alleges that a forcible entry and detainer action ensued which caused her to file a proceeding in the Justice Court of Travis County, Texas, prosecute an appeal to the County Court at Law No. 2 of

Travis County, Texas, and thereafter prosecute appeals to the Court of Appeals for the Third Supreme Judicial District and the Texas Supreme Court. Petitioner apparently seeks a review of the decisions of the lower courts in Texas.

IV. SUMMARY OF ARGUMENT

1. Petitioner has produced no record on appeal. Therefore, Petitioner has waived any right she may have had for this Court to review the proceedings of the Texas state courts.

2. Petitioner has not demonstrated that she is appealing from a final decision of the Texas Supreme Court. Likewise, Petitioner has not shown that this appeal deals with a statute which is allegedly repugnant to the Federal Constitution and/or the laws of the United States as is required by 28 U.S.C. §1257. Therefore there is no jurisdiction to support the Petition for Writ of Certiorari.

3. The Texas foreclosure statute, Texas Property Code §51.002, is constitutional. Petitioner has demonstrated no reason for this Court to find the statute unconstitutional.

V. ARGUMENTS

1. No Record on Appeal.

Petition makes liberal references to facts, especially on pages 2-14 of her Petition for Writ of Certiorari. The Petition makes absolutely no reference to any record on appeal other

than certain "computer reconstructions" attached as appendices. There are no pleadings from the courts below, no briefs, no transcripts of evidentiary proceedings, and no correct copies of court orders or decrees.

This Court has held the decisions of courts below and their supporting records must be sufficiently complete to allow for a fair review. See Ramsey v. United Mine Workers of America, 401 U.S. 302 at 312 (1971). See also Kelly v. Panama Canal Commission, 26 F.3d 597 (5th Cir. 1994) and Walter Fuller Aircraft Sales, Inc. v. Republic of Philippines, 965 F.2d 1375 (5th Cir. 1992). It is the burden of the party prosecuting an appeal to provide a sufficient record for the reviewing court to consider the matters raised on appeal. See Great Plains Equipment, Inc. v. Koch Gathering Systems, Inc., 45 F.3d 962 (5th Cir. 1995); Powell v. Estelle, 959 F.2d 22 (5th Cir. 1992). Matters not in the record on appeal are waived. See Lewis v. Parish of Terrebone, 894 F.2d 142 (5th Cir. 1990).

In this case, there is no record. It is impossible to determine what facts were proved in the courts below, what issues were raised in the courts below, what orders were issued by the courts below, or the basis for the decisions of the courts below. Under these circumstances, Petitioner has waived any right to have this Court review the matters raised in her Petition for Writ of Certiorari.

2. No Jurisdiction

28 U.S.C. §1257 establishes jurisdiction of this Court to review final judgments or decrees rendered by the highest court of a state, where the validity of a statute is drawn into question because the statute is repugnant to the Federal

Constitution or the laws of the United States. Petitioner has established none of these matters by this appeal.

It is imperative that the Petitioner establish that she first raised her constitutional issues in the state courts. "It was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions." Cardinale v. Louisiana, 394 U.S. 437 at 438 (1969). It has also been established by the courts that a party may not collaterally attack the validity of a state court judgment by merely injecting Federal Constitutional issues. "It is a well-settled principle that a plaintiff may not seek a reversal in federal court of a state court judgment simply by casting his complaint in the form of a civil rights action." See Reed v. Terrell, 759 F.2d 472 at 473 (5th Cir. 1985). There is nothing in the record before this case to show that Constitutional issues were raised in the Texas court or how the lower courts ruled on these questions.

Moreover, at page two of the Petition for Writ of Certiorari, the Petitioner complains about the decisions of the Third Judicial District Court of Appeals and three decisions of Judge David Phillips, who presides over Count Court at Law No. 2 of Travis County, Texas. This Court has no jurisdiction to review any of these matters inasmuch as none of these courts constitutes the highest court in the State of Texas, as required by 28 U.S.C. § 1257.

3. § 51.002 of the Texas Property Code is Constitutional

The courts of the United States have consistently held that private persons are entitled to enter into whatever private contractual arrangements they wish, including contractual

arrangements which provide for the non-judicial foreclosure sale of personal and real property. This has long been the law. See Scott v. Paisley, 271 U.S. 632, at 635 (1926) and Bell Silver & Copper Mining Co. v. First National Bank, 156 U.S. 470 at 477 (1895).

The Fifth Circuit Court of Appeals has specifically reviewed the constitutionality of the Texas foreclosure law, Tex.Prop.Code 51.002 (West 1995) and has found the law to be constitutional. See Barrera v. Security Building & Investment Corp., 519 F.2d 1166 at 1170 (5th Cir. 1975) and Daniel v. Ferguson, 839 F.2d 1124 at 1128-9 (5th Cir. 1988).

Petitioner has raised no factual or legal issues in her Petition which would call for this Court to invalidate the Texas foreclosure statute. Petitioner admits at various points in her Petition that she did not read or understand her mortgage loan or deed of trust, did not pay her mortgage loan, and did not timely arrange for paying off the loan. Even if these facts were established by the record on appeal, they would present no reason to invalidate a law which has been in use in Texas for well over a hundred years.

VI. CONCLUSION

Petitioner's Application for Writ of Certiorari should be denied. There is no sufficient record on appeal for this Court to consider any of the matters raised in the Petition. Petitioner has not established the jurisdiction of this court to consider her appeal. Finally, Petitioner has demonstrated no reason for this Court to invalidate the Texas foreclosure statute.

Respectfully submitted,

BARRETT, BURKE, WILSON, CASTLE
DAFFIN & FRAPPIER, L.L.P.



By:

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